IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.875 OF 2003
AND
CRIMINAL APPLICATION NO.4612 OF 2002

Union of India ...Applicant
(In both the Applications)

Versus

Jethalal Ganatra & Ors. ...Respondents
(In both the Applications)

Shri H.V.Mehta for the Applicant in both the Applications.
Shri Yogesh P.Yagnik for the Respondent No.1 in both the Applications.
Shri D.P.Adsule, A.P.P for the State in both the Applications.

CORAM : A. S. OKA, J.

DATE : DECEMBER 20, 2006.

P.C.:

1. Heard the Advocate appearing for the Applicant and Advocate appearing for the first Respondent. Office noting shows that the second Respondent is dead and the third Respondent is duly served.

2. Criminal Application No.1407 of 1999 filed by the Applicant under section 378 of the Code of Criminal Procedure, 1973 was dismissed for non-removal of office objections by order dated 07th September, 2001.

3. The case made out in these Applications is that the clerk employed by the Advocate for the Applicant did not inform the Advocate that the Application for leave was listed before this Court. Only after the Advocate for the Applicant made inquires in the office as to why Application was not coming on board, the Advocate for the Applicant became aware of the fact that the Application for leave has been dismissed for non-removal of office objections.

4. The learned Advocate for the first Respondent has opposed this Application by pointing out that restoration will cause prejudice to the first Respondent.

5. I have considered the submissions. The Application for leave preferred by the Applicant was dismissed only on the ground that objections were not removed. In the Application, reasons are given as to why the Advocate for the Applicant was not aware about the dismissal of the Application for non-prosecution. As the Application has been dismissed for non-prosecution on the ground of non-removal of office objections, an opportunity deserves to be granted to

the Applicant to prosecute the said Application on merits.

6. The first Respondent has submitted a letter dated 13th October, 2006 to this court in which he has set out that the original case was filed 25 years back. He has stated that he has no source of income.

7. Considering the prejudice to the first Respondent he will have to be compensated by ordering payment of costs.

8. Hence, I pass the following order:

(i) Criminal Application No.875 of 2003 is allowed in terms of prayer clause (a) and Criminal Application No.4612 of 2002 is allowed in terms of prayer clauses (a) and (b) subject to condition that the Applicant will pay a total sum of Rs.5,000/- by way of costs to the first Respondent on or before 16th February, 2007. Payment of costs will be the condition precedent. If compliance is not made, the order of dismissal of the Application for leave

(Criminal Application No.1407 of 1999) will stand.

(ii) The deposit of the amount in this court within the time stipulated by this order will be treated as sufficient compliance with the order.

(iii) The Applicant is granted time till 16th February, 2007 to remove all office objections in Criminal Application No.1407 of 1999. If compliance is not made, the Application will stand dismissed.

(iv) If compliance is made, office will place the said Application on board for admission on 20th February, 2007. It is made clear that the Application for leave will not survive as against the second Respondent.

JUDGE